

10 CHARLES STEVENS,

11 Petitioner,

12 No. C 09-00137 WHA

13 v.

14 **DEATH PENALTY CASE**15 KELLY MITCHELL, Acting  
16 Warden, San Quentin State Prison,

17 Respondent.

18 **ORDER RE PETITIONER'S  
REQUEST TO WITHDRAW  
CERTAIN CLAIMS FROM PETITION**19 The Court held a hearing at San Quentin prison with petitioner and petitioner's counsel  
20 on December 3, 2014, to hear his "motion to dismiss the penalty appeal" (ECF Dkt. 74).  
21 Respondent's counsel appeared at the beginning and end of the hearing, but did not participate  
22 in the substantive colloquy. The substantive part of the hearing will remain under seal.23 The essence of the problem is whether or not petitioner may direct his counsel to  
24 withdraw and waive certain claims from his petition for habeas corpus relief, assuming that the  
25 waiver of such claims by petitioner is competent, informed, and voluntary. Put differently, do  
26 federal habeas counsel have a duty to make all plausible claims for relief regardless of the  
client's wishes or does a petitioner have the authority to direct his counsel to abandon certain  
claims? Counsel requested the opportunity to brief the issue.27 Accordingly, counsel for petitioner and respondent shall brief the issue of a petitioner's  
28 authority to direct his counsel to withdraw certain claims from his petition even if over the

## United States District Court

For the Northern District of California

1 objection of his own counsel. Such briefs are due on or before **JANUARY 9, 2015**, and are limited  
2 to not more than twenty pages each.

3 The Court further expects that it will appoint, via separate order, additional counsel for  
4 petitioner for the sole purpose of representing petitioner in his desire to direct his federal habeas  
5 counsel to dismiss or withdraw certain claims from the petition, said brief to be due by  
6 **JANUARY 16**.

7 This order further **FINDS** that petitioner is competent to make a decision to waive and to  
8 withdraw the claims at issue, that he is and has been fully informed of the consequences of doing  
9 so, including the inability to resurrect these claims at a future date, and that his decision to  
10 withdraw and waive those claims is voluntary. For the time being, however, the claims at issue  
11 will not be dismissed, pending briefing and further decision.

12 Petitioner's traverse is still due on **DECEMBER 23, 2014**. However, the traverse need not  
13 address claims 13, 14, 17, 19, 20, 22, 26 and 27. A supplemental traverse on these claims may  
14 be filed later pending the outcome of petitioner's "motion to dismiss the penalty appeal" (ECF  
15 Dkt. 74).

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17 **IT IS SO ORDERED.**

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19 Dated: December 5, 2014.

  
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21 WILLIAM ALSUP  
22 UNITED STATES DISTRICT JUDGE  
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